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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, -VS- STEVEN DEMOCKER, Defendant.	Case No. P1300CR201001325 RULING RE: REQUEST FOR RECORDS	FILED DATE: <u>8-8-2011</u> <u>1:28</u> O'Clock <u>P</u> .M. JEANNE HICKS, CLERK BY: <u>B. Chamberlain</u> Deputy
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HONORABLE DAVID L. MACKEY DIVISION 1	BY: Cheryl Wagster Judicial Assistant DATE: August 8, 2011
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The Presiding Judge has been requested to examine the February 7, 2011 Request For Records filed by William E. Williams in P1300CR20081339 pursuant to Rule 123, *Arizona Rules of the Supreme Court* as Mr. Williams claims that the Honorable Warren R. Darrow did not consider his request when issuing Orders regarding all sealed documents. The Court has reviewed the Request For Records and makes the following findings and orders:

1. June 6, 2009 Motion filed under seal.

There was no motion filed under seal on June 6, 2009; however, the Court believes that this may be a reference to the Defendant's Motion To File Rule 15.9 Applications Ex Parte, In Camera, And Under Seal And For An Expedited Ex Parte, In Camera, Under Seal Hearing filed on July 6, 2009. The Court has considered the content of that Motion and has determined that there is no information within that Motion that warrants the continued sealing of that Motion. The Motion outlines the process that is being proposed but does not refer to any particular expert or area of inquiry.

IT IS ORDERED the Defendant's Motion To File Rule 15.9 Applications Ex Parte, In Camera, And Under Seal And For An Expedited Ex Parte, In Camera, Under Seal Hearing filed on July 6, 2009 that was previously ordered sealed shall be **UNSEALED** and made available for examination by the public.

2. July 10, 2009 notes and list of attendees in sealed hearing.
3. July 10, 2009 sealed minute entry.

There are no separate notes or list of attendees in sealed hearing except as set forth in the July 10, 2009 sealed minute entry. The Court has examined the July 10, 2009 sealed minute entry including the attached Defendant's Financial Statement. The Court finds that there is no information in either the minute entry or the financial statement that warrants the continued sealing of that minute entry.

IT IS ORDERED the July 10, 2009 minute entry and the attached Defendant's Financial Statement that was previously ordered sealed shall be **UNSEALED** and made available for examination by the public.

4. July 16, 2009 sealed application.

The Court has examined the Defendant's Application For Rule 15.9 Appointment of [Redacted] (Ex Parte, In Camera, Under Seal) filed on July 16, 2009. The Court finds that the application contains the name of a consulting expert for the Defendant and the area of that consulting expert's expertise. Since the case is still pending trial and since the trial court has not yet determined whether that consulting expert was disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously order the document be sealed still exist. The Court also has determined that the document cannot be redacted in a way that would allow for meaningful review without divulging the information that needs to remain confidential at this time.

IT IS ORDERED the request to examine the Defendant's Application For Rule 15.9 Appointment of [Redacted] (Ex Parte, In Camera, Under Seal) filed on July 16, 2009 is **DENIED**.

5. July 16, 2009 notes and attendee list from ex parte in camera sealed hearing.

There are no separate notes or list of attendees from the ex parte in camera sealed hearing except as set forth in the July 16, 2009 sealed minute entry. The Court has examined the July 16, 2009 sealed minute entry. The Court finds that there is no information in the minute entry that warrants the continued sealing of that minute entry.

IT IS ORDERED the July 16, 2009 minute entry shall be **UNSEALED** and made available for examination by the public.

6. July 21, 2009 order, sealed.

The Court has examined the Order For Rule 15.9 Appointments (Under Seal) filed July 21, 2009. The Court finds that the Order contains the names of consulting experts for the Defendant and the area of the consulting experts' expertise. Since the case is still pending trial and since the trial court has not yet determined whether the consulting experts were disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously order the document be sealed still exist. However, the Court finds that the Order can be redacted in such a way that the Order can be disclosed without revealing the names or areas of expertise of the consulting experts. The Court has examined the redacted version prepared for distribution pursuant to the Orders of the Honorable Warren R. Darrow. The Court finds that the same reasons that caused the Court to previously order the document be sealed still exists; however, the Court concludes that after redactions of the names and areas of expertise, a redacted version can be unsealed and made available for review by the public.

IT IS ORDERED the request for a release of an unredacted version of the Order For Rule 15.9 Appointments (Under Seal) filed July 21, 2009 is **DENIED**; however, the Clerk of Court is authorized to proceed with the release of a redacted version pursuant to the prior Orders of the Honorable Warren R. Darrow.

7. July 21, 2009 sealed motion.

The Court has examined the Defendant's Motion For Rule 15.9 Appointment of Transcription And Document Experts (Ex Parte, In Camera, Under Seal) filed July 21, 2009. The Court finds that there is no reason to keep that document sealed as it requests the appointment of an expert transcription service to transcribe "an estimated 56.5 hours of interviews and the 1,617 jail calls with an estimated 340 hours of calls, disclosed to the defense" as well as an expert in document imaging and electronic discovery "to Bates label and print the 4000 color photos produced by the State electronically." The Court finds that the release of the names of those transcription and document services cannot impact the Defendant's case or his right to a fair trial in any way. In addition, the Court has reviewed the attachments to that Motion that includes lists of interviews conducted by the State and dates of the Defendant's Jail phone calls. All of that information was disclosed by the State. There is no information within that Motion that warrants the continued sealing of that Motion.

IT IS ORDERED the Defendant's Motion For Rule 15.9 Appointment of Transcription And Document Experts (Ex Parte, In Camera, Under Seal) filed July 21, 2009 that was previously ordered sealed shall be **UNSEALED** and made available for examination by the public.

8. August 3, 2009 sealed order.

The Court has examined the Order For Rule 15.9 Appointments (Under Seal) filed August 3, 2009. That Order addresses the same transcription and document experts set forth in the Defendant's Motion For Rule 15.9 Appointment of Transcription And Document Experts (Ex Parte, In Camera, Under Seal) filed July 21, 2009. For the same reasons the Court ordered the Motion unsealed, the Court finds that the Order should be unsealed. The only "experts" identified in the Order are the transcription and document imaging "experts".

The Court notes that the Order also reflects a Clerk of Court distribution stamp that indicates a copy was provided to the County Attorney, to Victim Witness and to the Public Defender.

IT IS ORDERED the Order For Rule 15.9 Appointments (Under Seal) filed August 3, 2009 that was previously ordered sealed shall be **UNSEALED** and made available for examination by the public.

9. August 7, 2009 sealed motion.

The Court has examined the Defendant's Motion For Reimbursement of Costs Incurred To Provide Appointed Experts With Necessary Disclosure (Ex Parte, In Camera, Under Seal) filed on August 7, 2009. The Court finds that the Motion contains the names of consulting experts for the Defendant. Since the case is still pending trial and since the trial court has not yet determined whether the consulting experts were disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously order the document be sealed still exist. The Court also has determined that the document cannot be redacted in a way that would allow for meaningful review without divulging the information that needs to remain confidential at this time.

IT IS ORDERED the request to release the Defendant's Motion For Reimbursement of Costs Incurred To Provide Appointed Experts With Necessary Disclosure (Ex Parte, In Camera, Under Seal) filed on August 7, 2009 is **DENIED**.

10. August 11, 2009 sealed order granting.

The Court has examined the [Proposed] Order Granting Motion For Reimbursement of Costs Incurred To Provide Appointed Experts With Necessary Disclosure (Ex Parte, In Camera, Under Seal) filed August 11, 2009. That Order addresses payment for copying documents and does not disclose the names of any of Defendant's experts. There is no information within that Order that warrants the continued sealing of that Order, the Court finds that the Order should be unsealed.

The Court notes that the Order also reflects a Clerk of Court distribution stamp that indicates a copy was provided to the County Attorney, to Victim Witness and to the Public Defender.

IT IS ORDERED the [Proposed] Order Granting Motion For Reimbursement of Costs Incurred To Provide Appointed Experts With Necessary Disclosure (Ex Parte, In Camera, Under Seal) filed August 11, 2009 that was previously ordered sealed shall be **UNSEALED** and made available for examination by the public.

11. August 18, 2009 sealed application.

The Court has examined the Defendant's Application For Rule 15.9 Appointment of [Redacted] (Ex Parte, In Camera, Under Seal) filed on August 18, 2009. The Court finds that the application contains the name of consulting experts for the Defendant and the area of the consulting experts' expertise. Since the case is still pending trial and since the trial court has not yet determined whether the consulting experts were disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously

order the document be sealed still exist. The Court also has determined that the document cannot be redacted in a way that would allow for meaningful review without divulging the information that needs to remain confidential at this time.

IT IS ORDERED the request to examine the Defendant's Application For Rule 15.9 Appointment of [Redacted] (Ex Parte, In Camera, Under Seal) filed on August 18, 2009 is **DENIED**.

12. August 19, 2009 sealed order.

The Court has examined the Order For Rule 15.9 Appointments (Under Seal) filed August 19, 2009. The Court finds that the Order contains the names of consulting experts for the Defendant and the area of the consulting experts' expertise. Since the case is still pending trial and since the trial court has not yet determined whether the consulting experts were disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously order the document be sealed still exist. However, the Court finds that the Order can be redacted in such a way that the Order can be disclosed without revealing the names or areas of expertise of the consulting experts. The Court has examined the redacted version prepared for distribution pursuant to the Orders of the Honorable Warren R. Darrow. The Court finds that the same reasons that caused the Court to previously order the document be sealed still exists; however, the Court concludes that after redactions of the names and areas of expertise, a redacted version can be unsealed and made available for review by the public.

The Court notes that the Order also reflects a Clerk of Court distribution stamp that indicates a copy was provided to the County Attorney, to Victim Witness and to the Public Defender.

IT IS ORDERED the request for a release of an unredacted version of the Order For Rule 15.9 Appointments (Under Seal) filed August 19, 2009 is **DENIED**; however, the Clerk of Court is authorized to proceed with the release of a redacted version pursuant to the prior Orders of the Honorable Warren R. Darrow.

13. August 21, 2009 sealed order amending.

The Court has examined the Amended Order For Rule 15.9 Appointment Re: [Redacted] (Under Seal) filed August 21, 2009. The Court finds that the Order contains the name of a consulting expert for the Defendant and the area of the consulting expert's expertise. Since the case is still pending trial and since the trial court has not yet determined whether the consulting expert was disclosed or should be disclosed, the Court finds that the same reasons that caused the Court to previously order the document be sealed still exist. However, the Court finds that the Order can be redacted in such a way that the Order can be disclosed without revealing the name or areas of expertise of the consulting

expert. The Court has examined the redacted version prepared for distribution pursuant to the Orders of the Honorable Warren R. Darrow. The Court finds that the same reasons that caused the Court to previously order the document be sealed still exists; however, the Court concludes that after redactions of the name and area of expertise, a redacted version can be unsealed and made available for review by the public.

The Court notes that the Order also reflects a Clerk of Court distribution stamp that indicates a copy was provided to the County Attorney, to Victim Witness and to the Public Defender.

IT IS ORDERED the request for a release of an unredacted version of the Amended Order For Rule 15.9 Appointment Re: [Redacted] (Under Seal) filed August 21, 2009 is **DENIED**; however, the Clerk of Court is authorized to proceed with the release of a redacted version pursuant to the prior Orders of the Honorable Warren R. Darrow.

IT IS FURTHER ORDERED that all documents Ordered unsealed shall be scanned including redacted versions of otherwise sealed Orders and those unsealed or redacted versions of otherwise sealed documents shall be made available for review by the public.

The Court has considered that current counsel for the State, current counsel for the Defendant and prior counsel for the Defendant may have additional information that would cause this Court to reconsider this Ruling.

THEREFORE, IT IS ORDERED this Court's Ruling is **STAYED until August 31, 2011** to give current counsel for the State, current counsel for the Defendant and prior counsel for the Defendant an opportunity to file a request that the Court reconsider this Ruling and such a request shall be filed no later than **Monday, August 22, 2011**.

cc: Honorable Warren R. Darrow – Division Pro Tem B
Jeffrey Paupore – Deputy Yavapai County Attorney
Craig Williams – DeRienzo and Williams, 3681 N. Robert Road, Prescott Valley, AZ 86314 (e)
Greg Parzych – 222 N. Central Avenue, Phoenix, AZ 85004 (e)
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